

Infrastructure of contract enforcement

9.120 Modern concepts of regulation of contracts involved in infrastructure, and the complex contracts of the market economy, require a sound framework of law and enforcement. The public goods of law and order, and contract enforcement, are a central part of the infrastructure of a modern economy.

9.121 India started out with an English “common law” tradition, where laws were written in terms of general principles, and courts played a major role in interpreting principles in the light of contemporary issues. Over time, this common law heritage has become less important, and the structure of Indian law has moved closer to “civil law”, where legislation contains explicit detail and extensive codification. This is more rigid, and gives courts less room to interpret general principles to reflect evolving conditions.

9.122 There are over 3,500 Central laws in force. There might be 25,000 to 35,000 laws of States. In addition, there is a substantial body of subordinate legislation. A single collection, putting all these together on one website, does not exist. The agenda for Indian legal reform comprises five aspects.

9.123 **Old laws:** There are laws which go as far back as 1836. Elements of legislation which play a major role in the economy go back to the 19th century, such as the Societies Registration Act (1860), the Indian Evidence Act (1872), the Indian Trusts Act (1882), and the Transfer of Property Act (1882). Old laws tend to have clauses that are incompatible with modern India. The Jain Commission (1998) identified 1300 out of roughly 3,500 statutes for outright repeal. Of these, roughly 350 were repealed in 2001 and 2002. The real complexities lie in the areas where outright repeal is not possible.

9.124 **Harmonisation and rationalisation:** As an example, there are 45 Central Acts which directly pertain to labour alone. Beyond this, there are other Acts which indirectly concern labour. Given this large body of law, many inconsistencies have crept in.

9.125 **Reducing over-legislation and state intervention:** As an example, the Weekly Holidays Act of 1942 requires that every shop must be closed for one day a week. This is inconsistent with the 24 hours a day, 365 days a year vision of modern retailing. The controls used by the State under the Essential Commodities Act (1955) are no longer relevant. The Factories Act requires that all inside walls be re-painted or re-varnished at least once every five years. These kinds of detailed prescriptions are inconsistent with the economic reforms process, which requires the State to refocus on the provision of public goods.

9.126 **Administrative law reform:** Difficulties of transparency and public disclosure have been experienced in the context of rules, orders and regulations that form subordinate legislation. A related aspect is greater clarification and establishment of State liability when the State or agents of the State inflict damage upon any citizen.

9.127 **Speed of dispute resolution:** The number of judges in India is roughly 10 per million of the population, while OECD countries have 50 to 100 judges per million of population. There are 23 million cases pending in courts. From 1995 onwards, every year, the number of cases disposed of has been roughly 90 per cent of the new cases filed, so the backlog continues to steadily grow. After 1995, the backlog at the Supreme Court has dropped significantly, through IT-intensive productivity improvements. Comparable productivity improvements need to be implemented in all courts, so as to eliminate the backlog and speed up disposal of cases.